Filed 2/16/05 In re Darren R. CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re DARREN R. et al, Persons Coming Under the Juvenile Court Law.	
TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. SHIRLEY E., Defendant and Appellant.	F046137 (Super. Ct. No. 39728) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Tulare County. Martin Stavin, Judge.

Catherine Campbell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, John A. Rozum, Chief Deputy County Counsel and Bryan Walters, Deputy Counsel, for Plaintiff and Respondent.

Appellant, Shirley E., seeks to have this court reverse a juvenile court's denial of her request for visitation with her four eldest children. We affirm.

FACTUAL AND PROCEDURAL HISTORY

This family's long history of problems has been previously recounted by this court two times. (See *Enrique R. v. Superior Court*, No. F040191, filed May 28, 2002; *In re Darren R.*, No. F040523, filed Jan. 16, 2003.) Suffice to say appellant has a history with county agencies and the Tulare County Health and Human Services Agency (Agency) dating back to 1989 that includes domestic abuse, filthy living conditions, lack of food, substance abuse and violent behavior by appellant. Appellant's violence ultimately led to her incarceration after she stabbed a neighbor during an altercation in 2002.

Appellant was sentenced to four years in prison and visitation between appellant and the children was suspended on February 14, 2002. In making that order the court determined visitation with appellant was "very upsetting with the children." The children all subsequently underwent psychological examinations to help the court make a decision regarding visitation. All of the evaluators concluded the children should have no contact with their parents until the parents could be evaluated. The psychological evaluation of appellant was filed on May 10, 2002, and reported:

> "Overall, [appellant] is demonstrating symptoms of antisocial behavior, anger control problems, poor problem-solving abilities, and tends to focus on her own needs rather than those of others. [¶] … [¶] … Given the four oldest minor's [*sic*] significant emotional and psychological problems, it is recommended that Ms. [E.] have no face-to-face or phone contact with the four eldest children (Darren, Derick, Dexter, and Ruben) at this time. Correspondence contact with these minors may be considered and tried, but if any further problems arise from this contact, the court should consider stopping correspondence as well.…"

On May 16, 2002, the juvenile court ordered no visits with these children for appellant, and on July 11, 2002, ordered no contact at all. In making the no contact order the court stated:

> "The Court, based on the evidence obtained in the reports and in the file, no visits with Ms. [E.] [¶] … [¶] … I would say no correspondence. I see no

> benefit whatsoever to the children by contact with Ms. [E.], and I see detriment to them based on what I've read in the file and I'm concerned, and their best interests are what counts so no contact whatsoever."

The court continued the prior no-contact order at the Welfare and Institutions Code section 366.3 review hearings on January 9, 2003, July 3, 2003, December 18, 2003 and June 17, 2004.[1]

Appellant was paroled from prison on February 28, 2004 and sought a change to the visitation order at the June 17, 2004, review hearing. She appeals the court's denial of that request.

DISCUSSION

The sole issue raised by this appeal is whether the juvenile court erred in refusing to allow appellant visits with her children who have a permanent plan of long-term foster care. Appellant raised the issue of visitation after she was released from prison at a section 366.3 post-permanency review hearing, asking the court to change the current no-contact order that had been in place since July 11, 2002. Appellant requested the court lift the no-contact order and order supervised visitation instead. Appellant presented no evidence in support of her request, but contends on appeal the court erred because she was no longer in prison and maintaining a relationship with her was in the children's best interests.[2]

Appellant argues that section 366.26, subdivision (c)(4)(C) required the court to "make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or

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[1] Further statutory references are to the Welfare and Institutions Code.

[2] In her reply brief appellant distinguishes between the three oldest boys and Ruben, the fourth child, whose permanent plan was being changed to adoption. As to Ruben appellant appears to concede that a relationship with her may not be in his best interest given his potential adoption. Regardless, whether long term foster care or adoption, this record makes clear the no contact order was appropriate here.

emotional well-being of the child." (§ 366.26, subd. (c)(4)(C).) She argues that the court made no finding the visits would be detrimental and, citing only to *In re Jasmine P*. (2001) 91 Cal.App.4th 617, 621-622 [holding subdivision (c)(4) requires finding of detriment to deny parental visitation with children in long-term foster care], concludes the court erred by not making a finding of detriment.

We disagree. The court did make a finding of detriment in 2002 when it initially ordered no contact between appellant and her children. At the July 11, 2002, hearing the court determined, based "on the evidence obtained in the reports and in the file," that there would be "no benefit whatsoever to the children by contact with Ms. [E.]" Appellant did not then, and does not now, dispute that ample evidence supported that conclusion. *In re Jasmine P*. is simply inapposite. She nevertheless argues that because she is now out of jail, her children are "doing well" and the children desire visits, visits with her are appropriate. Thus, she maintains, the court erred in not changing its prior order to allow visits.

First, we note that the court did not have to make a continued finding of detriment at the 2004 hearing in order to continue its no-contact order. While section 366.26, subdivision (c)(4)(C) requires the juvenile court to make a visitation order when ordering long-term foster care, nothing in the section mandates a change to existing orders. Appellant has not previously and does not now dispute the propriety of the original no-contact order, and she presented no evidence to show a change of circumstances supporting a change to that order. Accordingly, the record on its face supports the no-contact order renewed at the review hearing.

In any event, the juvenile court is accorded broad discretion in visitation matters. On appeal, absent a showing of a clear abuse of discretion, the reviewing court will not interfere with the exercise of that discretion. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.) Here, there was no abuse of discretion.

Appellant acknowledges that there "can be no doubt that this family was highly burdened, and highly dysfunctional" and that the children had "all been at one time … traumatized by both their parents …." This is an understatement. Appellant has a violent history that ultimately resulted in her incarceration after stabbing a neighbor, apparently in the presence of at least some of her children. Appellant abused alcohol, engaged in domestic violence with her husband, abused and neglected her children and failed to make any progress in her parenting despite years and years of intervention and attempted assistance by county services.

The family has a history with child welfare services dating back to 1989 and comprising thousands of pages of evaluations, hearings, testing, services and documented abuse and neglect. The children that are the subject of this appeal have been at varying times described by experts as "mostly mute and withdrawn" (Ruben); "sad, insecure, anxious, suspicious, angry, obsessive and fearful" and suffering from "posttraumatic stress of an acute nature" (Derick); being involuntarily hospitalized for psychiatric treatment due to "suicidal/homicidal ideation and 'command auditory hallucinations'" (Dexter); suffering from "chronic, low-grade depressive features" (Darren). Dexter perhaps put it most basically and bluntly in reporting to one examiner, "I have had a lot of hard things in my life, more than most kids."

The evidence of detriment to the children before the court in 2004 was the same as that which existed in 2002: appellant's history with the children was very poor, her psychological evaluation indicated antisocial behavior issues and anger control problems, the children were extremely psychologically fragile, and past visits had been very upsetting to the children, including one visit "when the children went into a fit of rage and threatened to kill their foster parents."

Nothing that had led to the prior no-contact order was changed simply because appellant was no longer incarcerated. The trial court could have properly concluded that

a reason the children had partially stabilized during the two years appellant was in jail might have been directly related to their having no contact with her. If anything, the evidence before the court at the June 17, 2004, hearing was even more persuasive that contact with appellant would be detrimental to the children. Two of the children had been in a new foster home for less than a month and were still experiencing varying problems. One of the children had a potential adoptive placement pending. Obviously, the success of these placements was dependent on the children's emotional well-being, which was previously shown to be disrupted by visits with appellant. Moreover, appellant had continued her improper behavior by violating the no-contact order and visiting with two of the children after they ran away from their foster home to meet her at their grandmother's house. Appellant was out of prison but not working or attending school, and had apparently resumed her previous dysfunctional relationship with the children's father. The record contains a report that appellant called the social worker at one point after her release and threatened to take the boys to Mexico, and told her parole agent she is "currently in the process of getting all seven children back."

While appellant argues that section 366.26 favors visitation for children in long-term foster care, the statutory scheme is first and foremost geared toward permanence and stability for children. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation] ...." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; accord, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The paramount objectives in fashioning any orders for these children at this stage of the proceedings were permanency and stability. There was no indication whatsoever that appellant would be any more appropriate in visitation and contact with the children than she had been previously, and the record

supports the conclusion the children's permanency and stability are best served by having no contact with appellant.

DISPOSITION

The order appealed from is affirmed.

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Levy, J.

WE CONCUR:

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Harris, Acting P.J.

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Wiseman, J.